IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3954 OF 1996

Catalyst (India) Private Limited
P.O. Sandoz Baug, Kolshet Road
Thane - 400 607 ... Petitioner

V/s.

1. Laxman Jagannath Shelke
reisiding at Kolshet, Taricha
Pada, P.O. Sandoz Baug, Thane

2. Shri S.N. Kamble
Presiding Officer, 1st Labour
Court at Thane, at Wagle
Industrial Estate, Thane ... Respondents

Mr.C.U. Singh i/b Sanjay Udeshi for Petitioner
None for Respondent No.1
Respondent No.2 - formal party

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2004**

ORAL JUDGMENT:

. The Petition challenges the order of the Labour Court granting reinstatement with continuity of service but without backwages to the respondent-workman.

2. The facts in this case are not in dispute. The services of the respondent-workman were terminated on 9.5.1983. According to the respondent, his termination was illegal and therefore, he raised a dispute under the Industrial Disputes Act. The dispute was referred for adjudication by a Reference made to the Labour Court,

Thane. In the statement of claim, the contention of the respondent-workman was that he had not been permitted to resume his duties on 9.5.1983 by the watchman who, on instructions from the Administrative Manager of the petitioner-company, had not permitted him to enter into the factory premises. The respondent-workman has also stated that no order nor any reasons were given to him for stopping him from working in the factory premises. He has also contended that the legal dues including notice pay and retrenchment compensation was also not offered. On this basis, it was submitted that the termination effected on 9.5.1983 was illegal. The details as to the reasons for retrenchment were set out in the written statement filed by the Petitioner, The Petitioner company also stated that intimation was given to the Government of Maharashtra that the services of 20 workmen out of 43 helpers were terminated as they were rendered surplus. This notice was issued to the Government on 7.5.1983 and from 9.5.1983, the workmen were informed that their services would be retrenched. According to the petitioner, the retrenchment compensation payable and the notice wages were also tendered to the workmen in accordance with law and, therefore, the termination effected on 9.5.1983 was not illegal as contended by the workman. It was contended that besides sending a telegram before the services were retrenched, a letter was sent to him alongwith the legal

dues arising out of retrenchment.

3. After the pleadings were complete, the respondent led evidence before the Labour Court. Both the parties had by purshis tendered to the Court indicated that the evidence of one J.Shreedharan which was led in Reference (IDA) No.48 of 1987 should be read as evidence in the present reference. It was also agreed that the postal envelopes, money orders and letters be read and accepted as evidence. In order to allay any sort of misgivings on the part of the Labour Court that the retrenchment was in breach of the provisions of the law, the Petitioner also examined one Navinchandra Laxmichand Nagda, who was then the Works Manager. This witness in his examination-in-chief has stated thus:

> 6. The Company prepared the seniority list of all the 43 helpers since the Company had decided to retrench helpers. It was prepared in April 20, 1983 and same was exhibited on notice board. The Seniority list was displayed by Mr.Chidambaram as he was Personal Assistant to Mr.C.G. Mahant. We have sent the copies of this seniority list to various authorities like Commissioner of Labour and also to the authorities in Mantralaya etc. The Seniority list which is alleged to be displayed on notice is filed in other connected cases pending before this Court.

4. In the cross-examination, there is no suggestion made to this witness on behalf of the Respondent that the seniority list of the helpers was not put up in

accordance with Rule 81 of the Industrial Disputes (Bombay) Rules. In fact, he has asserted that the seniority list was displayed wherein the seniority of all the workers including the 43 helpers was displayed. The Petitioner then filed a copy of the seniority list before the Labour Court. The evidence of Shreedharan indicates that the seniority list which was displayed by the employer was produced in Court.

5. The Labour Court while deciding the Reference has concluded that the retrenchment compensation has been paid to the workmen as required under section 25F of the Industrial Disputes Act. However, since the seniority list was not displayed by the Petitioner in accordance with section 25G r/w Rule 81, the Labour Court has set aside the order of termination and has granted reinstatement with continuity of service. As regards the backwages, the Labour Court has found that the respondent was running his own factory and therefore, was gainfully employed.

6. Mr.Singh, learned Counsel for the Petitioner, submits that the Labour Court has erroneously held that the services of the respondent-workman have not been terminated in accordance with law. According to him, the question as to whether the seniority list was displayed or whether the provisions of section 25G had

been complied with was not raised in the statement of claim and, therefore, this issue need not have been considered by the Labour Court at all. He submits that unless there is a pleading no amount of evidence can substantiate the case made out by the workman. He places reliance on the case of *Shankar Chakravarti v/s. Britannia Biscuit Co. Ltd. & Anr.,* **AIR 1979 SC 1652**.

7. A perusal of the statement of claim would show that the only contention raised by the respondent-workman was that his services had been terminated without giving him notice and payment of retrenchment compensation. Therefore, what was pleaded by the workman was that his services have been terminated without complying with section 25F of Industrial Disputes Act. There is not even a whisper in the statement of claim that his services had been terminated in violation of section 25G r/w Rule 81 of the Industrial Disputes (Bombay) Rules. In these circumstances, the Labour Court ought not to have gone into the question as to whether the termination of services had been effected in compliance with 25G. When the case pleaded by the respondent-workman was only regarding breach of section 25F, there was no need for the Tribunal to have considered 25G. As held by the Apex Court in the case of *Shankar Chakravarti (supra)*, the elementary principle is a party must plead the fact

and then lead evidence on the issue pleaded. The party which seeks to establish the contention, which if true would be sufficient to deny the relief to the opposite side must specifically plead and prove it. If there is no pleading, there is no question of proving something which is not pleaded. The Supreme Court in paragraphs 31 and 32 of the judgment has observed thus:

> 31. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in Tin Printers (Pvt.) Ltd. v. Industrial Tribunal (1967) 2 Lab. LJ 677 at p.680 (Punj.) commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and

> then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.
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> 32. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic 'no'.

8. In my view, the reliance placed by Mr.Singh on this judgment is apt. There was no pleading in respect of section 25G or the seniority list and therefore, the Labour Court need not have been concerned with this aspect of the matter. In any event, the seniority list had been produced in the Reference (IDA) No.48 of 1987. The evidence of Shreedharan was led in that reference and the documents produced in the earlier reference were to be treated as exhibited in the present reference. Both Shreedharan and Nagda have stated that the seniority list was displayed. A copy of the seniority list was also filed before the Labour Court in the present reference. The seniority list indicates that the respondent-workman was the juniormost helper in the employment from 1.1.1980. Therefore, in any event, his services had been terminated in accordance with law.

9. In the circumstances, Rule made absolute with no order as to costs.

10. Writ Petition is disposed of accordingly.